

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3  
4 UNITED STATES OF AMERICA )  
5 vs. )  
6 ) No. 1:16-cr-10225-DPW  
7 EDWARD J. TUTUNJIAN AND )  
8 EJT MANAGEMENT, INC., )  
9 Defendants. )

10 BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

11  
12 EXCERPT FROM SENTENCING HEARING  
13 REMARKS AND PRONOUNCEMENT OF SENTENCE BY THE COURT

14  
15 John Joseph Moakley United States Courthouse  
16 Courtroom No. 1  
17 One Courthouse Way  
18 Boston, MA 02210  
19 December 13, 2016

20  
21 Brenda K. Hancock, RMR, CRR  
22 Official Court Reporter  
23 brhancock@msn.com  
24  
25

1 APPEARANCES:

2 UNITED STATES ATTORNEY'S OFFICE MA  
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8 On behalf of the United States of America.

9 GOOD SCHNEIDER CORMIER  
10 By: Andrew Good, Esq.  
11 Philip G. Cormier, Esq.  
12 83 Atlantic Ave.  
13 Boston, MA 02110  
14 On behalf of the Defendants.  
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1                                    EXCERPT

2                    THE COURT:    Thank you, Mr. Tutunjian.

3                    Well, let me just ask one question, perhaps for  
4    Probation.    With respect to community confinement, assuming  
5    that that is a viable alternative here, number one, can the  
6    costs be imposed entirely on the defendant for, say, Coolidge  
7    House?

8                    THE PROBATION OFFICER:    I'm not certain, your Honor.  
9    I haven't seen that come up yet, but you mean the cost of  
10   having him be held there?

11                   THE COURT:    Right.    No cost to the government, take  
12   away the liberty that is provided by community confinement in  
13   Coolidge House.    That's the question.

14                   THE PROBATION OFFICER:    I'm not sure it's authorized,  
15   but your Honor could make a judicial recommendation, and that  
16   way it would be something that would be considered if it is  
17   authorized.

18                   THE COURT:    And the respective costs, as I understand  
19   them, annually for forms of incarceration or forms of  
20   depravation of liberty set forth in Paragraph 127, they are  
21   \$30,621 a year for incarceration in the Bureau of Prisons,  
22   \$28,999 for community confinement, and for pure supervision  
23   it's \$3,909.

24                   THE PROBATION OFFICER:    Yes, your Honor.

25                   THE COURT:    Those are the respective costs.

1 THE PROBATION OFFICER: Mm-hmm.

2 THE COURT: Well, this presents great difficulties.  
3 That does not entirely distinguish it from every sentencing  
4 that I have ever participated in, and that Ms. Bower has  
5 accurately described what I think is involved in sentencing,  
6 which is the accommodation of incommensurables, a variety of  
7 different goals, and some goals that frequently are at odds  
8 with each other. The process of working that through comes to  
9 a result which is meant to be that accommodation, but it is  
10 done in an overarching way. Number one, the sentence should be  
11 sufficient but no more than necessary to serve the purposes of  
12 Section 3553. I start with the guidelines themselves, not  
13 because they are inherently reasonable, frequently I feel just  
14 to the contrary, but in the case of the tax guidelines they  
15 seem to me to be realistic. Many of the guidelines do not  
16 involve the kind of actual feedback that is supposed to inform  
17 the Sentencing Commission. The income tax guidelines do.

18 And so, those are a kind of touchstone and a  
19 touchstone that suggests that in the heartland of cases -- and  
20 I recognize that Mr. Good has argued that this is not in the  
21 heartland of cases -- but in the heartland of cases the idea of  
22 prison time somewhere above 24 months or more is reasonable.  
23 But starting with the guidelines doesn't end it. Section 3553  
24 requires me to consider a variety of factors. We have touched  
25 on them in various ways here.

1           I want to start with the nature and characteristics of  
2 the defendant. I credit Mr. Tutunjian's statement here about  
3 deep regret and unhappiness with his own inability to meet the  
4 high expectations that he had, and I must say that reading the  
5 letters that I've received here, and I have been at this quite  
6 some time, like Mr. Good, but this is the most impressive  
7 collection of letters I have ever received. They touch on a  
8 variety of aspects of Mr. Tutunjian's life that are laudable.  
9 That is not a clearing of the throat on my part. I think they  
10 accurately capture Mr. Tutunjian as a human being. One can go  
11 through these and find all sorts of individual stories that are  
12 personally affecting.

13           I do not mean to pick out vignettes, but rereading the  
14 letters again over the weekend I just picked out shorthand  
15 characterizations of him.

16           One is from Mr. Kaprielian, who writes that  
17 Mr. Tutunjian is a "hard-working man who has shown many, many,  
18 many kindnesses to others throughout his life."

19           There's another one from Elizabeth Sharawara, if I  
20 pronounce it correctly. I apologize if I have not. But what  
21 she said is that she's always seen the same values of family,  
22 hard work, down-to-earth lifestyle displayed in the Tutunjian  
23 home and in the community and through Mr. Tutunjian, and I  
24 credit that. These letters support that.

25           This is not lèse-majesté by some plutocrat. This is I

1 think reflective of an unassuming man, a man who lacks  
2 arrogance, who has been essentially humble, who does have a  
3 concern about the general human condition. Judges are adjured  
4 not to impose their judgment with fear or favor or tipping the  
5 scales toward the rich or the poor. It is clear to me that  
6 Mr. Tutunjian takes each human being that he deals with on  
7 their own terms and is not hierarchically driven. All of that  
8 is true, but that is not why we are here.

9 We are here because of a business decision, a business  
10 model that Mr. Tutunjian undertook, and that business model in  
11 some ways -- and it is unfair to use shorthand descriptions or  
12 at least not complete to use shorthand descriptions -- but this  
13 was a business model of doing good enabled by doing wrong.  
14 Doing good? Yes. Providing jobs for people who might not  
15 otherwise have jobs? Yes, being at least as disclosed in what  
16 has been provided to me in a contested proceeding, not in a  
17 one-sided story, but a contested proceeding in which parties  
18 have had an opportunity to submit and contest the particulars,  
19 an individual who treated his employees well on a variety of  
20 different levels.

21 But the business plan was to do it by not doing what  
22 every other business is required to do, and to be able to  
23 obtain money by not paying the taxes that every businessman  
24 should pay, by facilitating forms of government payment, like  
25 Section 8 payments, in a way that manages to skim for his own

1 employees something that should be generally available on fair  
2 terms to everyone, and depriving his employees perhaps of some  
3 benefits that they do not fully understand. He was dealing  
4 with a group of employees who have perhaps different views  
5 about paying taxes and the value of cash, perhaps value in cash  
6 up front as opposed to Social Security payments down the line.  
7 But the short of it is it was a business plan, a business plan  
8 that other businesses don't engage in and, consequently, can't  
9 benefit from, but he did, and benefit he did, very  
10 substantially.

11 Now, I do not mean to in any way depreciate where I  
12 started. This is a hardworking individual; this is not someone  
13 born with a silver spoon in his mouth. He built the business  
14 from the ground up, and he did it in a fashion that did not, at  
15 least it appears to me, involve looking down on his employees.  
16 He looked at them as a community, but it was a community that  
17 benefited him substantially, and one can say that it is easier  
18 to be generous when you have more money than other people, and  
19 one of Mr. Tutunjian's ways of getting more money than other  
20 people is to avoid the law.

21 Now, that treats it as a purely economic matter, and I  
22 don't mean my characterization of the defendant to be put in  
23 that sort of fashion. Ms. Bower said that he was a complex  
24 individual. I think that that is correct. It is a complex set  
25 of circumstances. Mr. Good talks in terms of multiple grounds

1 or multiple motivations, perhaps, here. I think that is true.  
2 But I start with the nature and characteristics of the  
3 defendant, because perhaps more than anything else it focuses  
4 on the challenges of this case.

5 But now I have to focus on the seriousness of the  
6 offense. It is a lot of money carefully calculated by the  
7 parties to figure out what is involved, money that competitors  
8 probably would have enjoyed having access to.

9 One of the reasons that the penalties in the tax  
10 setting are ferocious is that they are a cost of doing  
11 business, and so, to the degree that the penalties can be  
12 imposed in a way to make it less attractive to incur those  
13 costs, the government has had fairly substantial penalties  
14 built into payroll tax violations, for example. But it is too  
15 much to say that it is just taxes. On the other hand, it is  
16 perhaps overwrought to say, as Learned Hand once said, taxes  
17 are the price we pay for civilization, but it is, and so each  
18 dollar that Mr. Tutunjian takes to distribute in the way that  
19 he would like to distribute is taken from all of us, and that  
20 is the seriousness of the offense. Not nickel-and-diming, this  
21 is big-time money, and it is in the context of people who are  
22 not unhappy with the opportunity to receive cash, the  
23 opportunity even to receive jobs, people who are new to this  
24 country and perhaps don't embrace the idea that you pay taxes  
25 as a price of civilization. The short of it is, I view it as a



1 very serious crime. The way in which you sanction it cannot  
2 just be money, it has to be something more. It has to be the  
3 loss of liberty.

4 Now, I turn to the questions that are raised by  
5 deterrence. We talk sometimes in terms of specific deterrence  
6 and general deterrence. Specific deterrence is what do we need  
7 to do to keep Mr. Tutunjian from doing this again? Well, in  
8 some ways the unfolding of all of this has made it unlikely  
9 that Mr. Tutunjian will be engaged in this sort of thing again.  
10 I have said that I am of the view that I should credit the  
11 statement that he made here today. It seems consistent with  
12 slowly coming to grips with his responsibility. I am not sure  
13 putting him in jail is going to serve that purpose, and we have  
14 to keep in mind that the standard that I employ is sufficient  
15 but not more than necessary to serve the purpose of  
16 Section 3553.

17 But then we come to general deterrence, and that is in  
18 some ways the fishbone in my throat. There are other people  
19 out there less empathetic than Mr. Tutunjian, less likely to  
20 give the shirt off their back than Mr. Tutunjian is. Mr. Good  
21 has referred to various of his previous clients, unnamed, might  
22 fall in that category. There are people who are just genuinely  
23 greedy. Let's use them. So, they look at this and they say,  
24 well, if you can pay a lot of money and not go to jail and not  
25 have your liberty restricted, then it's worth it, because

1     general deterrence is I think served least by numbers of months  
2     in jail. It becomes a metric. It is much better served, I  
3     would think, or would be much better served by quick and  
4     certain punishment.

5             But that is not the lot of our life in the criminal  
6     justice system in the United States. Due process and a variety  
7     of other reasons, limited resources by prosecutors, all sorts  
8     of things, mean that it sometimes takes a long time to get to  
9     it. And so, what do we have? We have time in jail as a way of  
10    saying to those other people who might be considering what  
11    Mr. Tutunjian did, "Don't do it, because you're going to pay  
12    for it." That's what general deterrence is about, and that  
13    weighs in favor, as I made clear, of restrictions on liberty,  
14    generally incarceration.

15            I am concerned about disparity. That's what the  
16    Sentencing Guidelines were all about when they were created  
17    just about the time I came on the Bench. They really were  
18    meant to address this; that Senator Thurmond felt very strongly  
19    that white-collar defendants in the Northeast weren't getting  
20    much in the way of sentences, that white-collar sentences or  
21    sentences of economic crime were not being particularly  
22    forcefully sentenced. But that was not his major concern. He  
23    was really concerned with non-white-collar in the Northeast,  
24    that judges were just too soft.

25            At the same time Senator Kennedy was concerned about

1 sentencing generally and the arbitrariness of it, perhaps less  
2 so for non-white-collar crime than for other kinds of crime  
3 having to do with their respective views about the social  
4 contract, but certainly Senator Kennedy was concerned about  
5 white-collar crime.

6 And so, they imposed a structure, and the structure  
7 was meant to say, give voice to a view that Judge Friendly  
8 expressed: that you can commit a crime with as much damage  
9 involving a crowbar as a fountain pen.

10 Now, calling this a white-collar offense does not  
11 quite provide the nuance of where this took place and what kind  
12 of business it was, but it is a crime of a fountain pen with  
13 invisible ink that didn't show what was being paid out to  
14 people. And so, looking at this from the perspective of  
15 disparity is very important to me. If he came from an  
16 underprivileged background, incurred as much loss to the United  
17 States as Mr. Tutunjian did, there would be almost no talk  
18 about not going to jail. That may bespeak who judges are, what  
19 class they come from, what the general attitude of the public  
20 is, but it imposes a form of disparity.

21 And so, you look to the guidelines, and the guidelines  
22 here, as I have said, provide a kind of reasonable range. The  
23 short of it is, departing from the guidelines or departing from  
24 incarceration strikes me here as incurring the dangers of  
25 unwarranted disparity that the guidelines system or the

1 Sentencing Reform Act of 1984 was supposed to deal with.

2 So, then I come to the other major issue for me in  
3 formulating a sentence, and that is the impact of correctional  
4 treatment, generally thought of as incarceration. I have read  
5 carefully the submissions, tried to familiarize myself a bit  
6 more about the impact of health conditions, looked at the  
7 question of the Bureau of Prisons' ability to deliver  
8 healthcare and particularly with reference to diabetes.

9 I do credit the submission by Dr. Serdy concerning the  
10 kinds of treatment that Mr. Tutunjian has had as his regimen  
11 for some time now that manages his diabetes, and I do recognize  
12 that interrupting that will to some degree interfere with his  
13 medical circumstance. And, just as general deterrence, what  
14 would a non-jail sentence mean to others considering the kind  
15 of activity that Mr. Tutunjian engaged in mean for evaluation  
16 of whether it is worth it to do it? I also have in mind that  
17 imposing a collateral harm on someone else by sending him into  
18 a medical environment that cannot provide the care that he has  
19 been accustomed to and has apparently managed him is a form of  
20 additional punishment, a kind of corporal punishment.

21 I am concerned, of course, by the idea that rich men  
22 are able to go to the Joslin Diabetes Center; poor people  
23 aren't always. And so, does this lead to a disparity?  
24 Perhaps. But, ultimately, I am dealing with the sentencing of  
25 an individual, and my sentencing of the individual has to take

1     into consideration all of these factors. I believe that he has  
2     to be deprived of his liberty, but it doesn't have to be in the  
3     Bureau of Prisons; it can be in the community confinement. I  
4     believe, but I will structure this, and Ms. Broquist will help  
5     me do that, that I can impose the costs on Mr. Tutunjian for  
6     the depravation of his liberty.

7             Should the taxpayers pay some \$30,000 a year to keep  
8     him in a medical facility of uncertain quality? In this  
9     context I think not. Should Mr. Tutunjian pay for his  
10    depravation of liberty? Yes, he should, at the Coolidge House  
11    or some similar facility, and I am going to make it a period  
12    of -- I believe I can do this, and Ms. Broquist will tell me --  
13    18 months in the Coolidge House, all the costs to be paid for  
14    by Mr. Tutunjian, and the way in which I think I would like to  
15    do that is to say that he will pay the cost directly, and if he  
16    doesn't, then he will pay as a cost of fine that amount. We  
17    may have to work out what that means under these circumstances.

18            Ms. Broquist.

19            THE PROBATION OFFICER: Your Honor, I've been able to  
20    clarify a little bit with our office while you have been  
21    speaking, and, as it turns out, they have not seen it before  
22    that it's been authorized, but the defendant would be required  
23    to pay 25 percent of his income towards the subsidy of the  
24    housing. So, your Honor would want to impose that as a fine as  
25    opposed to payment of the cost of the Coolidge House stay.

1           THE COURT: Well, I think I would say not less than  
2     the cost of Coolidge House, the actual cost of Coolidge House,  
3     which I understand from the reports to be roughly \$29,999 or  
4     25 percent of his income. That is a fairly severe penalty, it  
5     seems to me, but it does two things. Number one, it deprives  
6     him of liberty without imposing corporal punishment needlessly;  
7     and, second, it imposes an increased cost associated with this  
8     that he, himself, bears for being the author of his own  
9     misfortune and that of the public generally. It may be that we  
10    will have to work on the judgment in this case a little bit to  
11    be sure that we have got this --

12           THE PROBATION OFFICER: Yes, your Honor. I'll get  
13    some guidance from our office, and we will contact your clerk.

14           THE COURT: But that is the direction in which I want  
15    to go on this, considering all of these factors.

16           Now, let me go back to the particulars of the  
17    recommendations and the sentence itself.

18           I am imposing a period of probation of 18 months, all  
19    18 months of which to be served in the community confinement.  
20    The community confinement shall provide for the defendant to  
21    make his own arrangements for medical treatment.

22           There is a fine to be imposed, and the fine is that  
23    the defendant pay not less than \$28,999 on a per annum basis  
24    for his cost of confinement in the community confinement  
25    facility to which he is designated and not more than 25 percent

1 of his income. I understand that that income can be  
2 manipulated to some degree, but it is also going to be  
3 supervised by his obligations with respect to the Internal  
4 Revenue Service.

5 There is restitution in the amount of \$1,391,012 to  
6 the IRS and \$699,718 to the Wage and Hour Division of the  
7 Department of Labor. I understand that to have been paid, but  
8 it will be embodied in the Judgment itself. In addition, the  
9 defendant is obligated to pay a Special Assessment of \$515 here  
10 for these several counts.

11 So long as the defendant has not paid all of his  
12 financial obligations, which are due and owing immediately, the  
13 defendant is going to be required to provide access to the  
14 Probation Office of any requested financial information. That  
15 may be shared with the United States Attorney's Office. The  
16 defendant shall file within 60 days of being placed on  
17 probation -- and he has now been placed on probation, which I  
18 believe is available because he was not taken into custody. Am  
19 I correct?

20 THE PROBATION OFFICER: Yes, your Honor, it is  
21 available, given the classes of conviction. Yes.

22 THE COURT: Given?

23 THE PROBATION OFFICER: Given the type of the  
24 convictions.

25 THE COURT: Right. The defendant is required to

1 provide the Examination Division of the IRS with all financial  
2 information necessary to determine his prior tax liabilities  
3 and to provide the Collection Division all financial  
4 information necessary to determine his ability to pay. And I  
5 will say that the fine, which can be as high as 25 percent of  
6 his income, is to take priority under these circumstances. He  
7 is to pay the fine before he pays the IRS for the ongoing  
8 financial obligations, except for the restitution up to date.

9 He is obligated to file accurate and complete tax  
10 returns for those years in which the returns were not filed or  
11 in which inaccurate returns were filed. He must make a  
12 good-faith effort to pay all delinquent and additional taxes.

13 He is subject to the mandatory conditions, that he not  
14 commit another federal, state or local crime, that under these  
15 circumstances he must provide a DNA sample as directed by the  
16 Probation Office. I will not impose a drug-testing condition,  
17 because it seems to me to be inappropriate here. And he must  
18 comply with the special conditions, including those that I have  
19 dealt with financially. But he is prohibited from possessing a  
20 firearm or other dangerous weapon, and, as I have indicated, he  
21 is going to be required to pay the balance of his fine and  
22 restitution according to any payment schedule that I might  
23 authorize if he does not pay it promptly. So, that provides a  
24 degree of supervision by the Probation Office over his  
25 financial circumstances.



1           I will add that, if there is any manipulation of  
2 income here, I will view it as a violation of his conditions of  
3 probation. This is not meant to provide a distortion of the  
4 way in which he takes income here. I also recognize that this  
5 is an uncertain time for him and for his family in terms of  
6 income, but, given that uncertainty, it is still necessary to  
7 provide a realistic form of supervision, and that is what I  
8 intend to do during the 18 months.

9           I assume that there will be a request for  
10 self-surrender here.

11                       (Mr. Good nodded)

12           THE COURT: He is simply to permit that to take place  
13 in a reasonably orderly fashion. But what ordinarily --

14           THE PROBATION OFFICER: Your Honor, what we would do  
15 is, once the judgment is issued, we would do a referral to the  
16 Coolidge House, and because it's a condition of probation it  
17 wouldn't really be a self-surrender per se; it would just be as  
18 soon as a bed is made available.

19           THE COURT: All right. So, we will deal with it in  
20 that fashion. I do not mean it to be disorderly; I mean it to  
21 be as seamless as possible to serve Mr. Tutunjian's medical  
22 needs, in particular.

23           But let there be no mistake. Coolidge House is not  
24 Belmont, and it is a deprivation of one's liberties, but it is  
25 also an opportunity for you, Mr. Tutunjian. There are people

1       there who are probably not unlike some of the people that you  
2       were helpful to in getting jobs and so on, people who are down  
3       on their luck who are trying to get started. You have been  
4       supportive to people like that in the past. My expectation is  
5       you will be supportive to people in that location in the  
6       future. That, at least, is part of why I have made that choice  
7       for that kind of sentence for you.

8               You should understand as well you have a right of  
9       appeal in this session, anyway, and you will discuss with your  
10      lawyers whether that makes any sense under these circumstances.

11             MS. BOWER: Your Honor, can I ask a clarifying  
12      question?

13             THE COURT: Sure.

14             MS. BOWER: So, if I understand it, the fine being  
15      imposed is at least \$28,999 per year.

16             THE COURT: Right.

17             MS. BOWER: But up to a quarter of his income --

18             THE COURT: Yes.

19             MS. BOWER: -- whichever is greater.

20             THE COURT: It will be the higher, the higher of the  
21      two.

22             MS. BOWER: Okay. Thank you, your Honor.

23             MR. GOOD: I just want to consult.

24             THE COURT: Yes. Sure.

25                     (Counsel conferred off the record)

1           THE PROBATION OFFICER: And, your Honor, just as part  
2 of the condition that he reside at Coolidge House, if you could  
3 also just add that he be required to comply with the rules of  
4 the facility.

5           THE COURT: Yes.

6           THE PROBATION OFFICER: Thank you.

7           MR. GOOD: I just have one point of clarification,  
8 your Honor. Mr. Tutunjian has income from the business, and we  
9 understand the direction not to manipulate that, and I  
10 understand that he is to pay 25 percent of that income as the  
11 fine, because it will exceed, I think, the annual cost.

12          THE COURT: Right.

13          MR. GOOD: The only other issue is that, as the  
14 agreement reflects, he has been selling real estate in order to  
15 pay the bank and pay his taxes. So, I'm hoping that the Court  
16 will treat the 25 percent as his earned salary, not the sale of  
17 the proceeds, because that he needs for these other  
18 obligations, the tax and --

19          THE COURT: It does, but I treat it as his adjusted  
20 gross income.

21          MR. GOOD: Okay.

22          THE COURT: It is not take-home salary from the  
23 company. It is his adjusted gross income.

24          MR. GOOD: Thank you, your Honor.

25          THE PROBATION OFFICER: And, your Honor, just for

1 clarification, it may take some time to get a bed for the  
2 defendant. So, when you say the 18 months, all of which to be  
3 served in the community confinement --

4 THE COURT: It starts to run --

5 THE PROBATION OFFICER: -- can we say less --

6 THE COURT: It starts to run when he enters Coolidge  
7 House.

8 THE PROBATION OFFICER: But he would also have to,  
9 then, technically be on probation a little bit longer than that  
10 for us to have authority, because if he's -- so perhaps we  
11 could say --

12 THE COURT: Okay. That's fair enough.

13 THE PROBATION OFFICER: -- the 18 months minus the  
14 time it takes to place him in Coolidge House, which I imagine  
15 can be done relatively quickly, or to add another month to give  
16 us the time. Because, otherwise, I don't think we would have  
17 authority over him until the sentence started.

18 THE COURT: All right. So, I think the way to  
19 accommodate that practical issue is simply say 20 months of  
20 probation, 18 months of which to be served in community  
21 confinement.

22 THE PROBATION OFFICER: Thank you, your Honor.

23 MS. BOWER: I'm sorry.

24 THE COURT: No, no. It is fashioning a sentence that  
25 is somewhat unusual, so it is important to talk through some of

1       these issues.

2               MS. BOWER:   So, back to the 25 percent of his adjusted  
3       gross income.

4               THE COURT:   Right.

5               MS. BOWER:   For one year or for one year and  
6       25 percent of the six months for the second year?

7               THE COURT:   It is for 18 months' worth of --

8               MS. BOWER:   18 months' worth of income?

9               THE COURT:   Right, adjusted gross income over the  
10      21 months.

11              MS. BOWER:   The 21 months.

12              THE COURT:   I should say the 18 months that he is in  
13      custody in the Coolidge House, subject to Coolidge House.

14              Now, I have a feeling that this judgment, more than  
15      other judgments, is going to be an iterative document, because  
16      there are some corners that have to be squared properly, and we  
17      will do that, but I think we all understand the purpose of this  
18      sentence and the way in which it has been fashioned.

19              Mr. Good, did you have something else you wanted to  
20      add?

21              MR. GOOD:    Yes.   As your Honor has observed at the  
22      guilty plea hearing --

23              THE COURT:   I'm sorry?

24              MR. GOOD:    As your Honor observed at the Rule 11  
25      hearing, Mr. Tutunjian no longer owns the taxi business, and we

1 have advised him not to participate in that business at all for  
2 City of Boston relationship reasons. Now, he can continue to  
3 draw a salary without working there, but I am not sure that  
4 it's in anyone's interest for him to actually work in the taxi  
5 business.

6 THE COURT: He will not be doing that for 18 months.

7 MR. GOOD: So, if he's at Coolidge House, at least in  
8 my experience, people work at some part of the day, so he'll  
9 get some sort of employment other than taxi business.

10 THE COURT: I will leave it to the Coolidge House to  
11 develop it, develop a program, which could include community  
12 service as well, as far as I'm concerned.

13 MR. GOOD: Okay. I just want to make clear about  
14 that.

15 THE COURT: But that is going to be dealt with at  
16 least at the initial stages by Coolidge House. To the degree,  
17 however, that forbearing a salary is reducing his adjusted  
18 gross income for this period in which he is obligated to pay a  
19 portion of it as a fine, that it seems to me may be a departure  
20 from my intent and something that I would look at as a  
21 violation of the terms of probation.

22 MR. GOOD: Understood.

23 THE COURT: But this is going to be policed by a  
24 variety of different entities, the IRS, Probation, and the  
25 U.S. Attorney's Office here, and if there is something going on

1 I will learn about it pretty quickly --

2 MR. GOOD: Very well, your Honor. Thank you.

3 THE COURT: -- I anticipate. Any other questions at  
4 this point, recognizing this is going to have to be developed a  
5 bit more?

6 So, then we turn to the question of EJT. There is a  
7 suggestion in some of the submittals that more of a fine or a  
8 fine could be imposed, that sort of thing. I think that the  
9 focus, particularly in the uncertainty here, ought to be and is  
10 on Mr. Tutunjian and his responsibility. I am going to adopt  
11 in toto the recommendation that is jointly provided by the  
12 parties under these circumstances, that is, probation for one  
13 year, restitution in the amount of \$219,307 to HUD, which I  
14 understand has been made as of today, or has been made, I  
15 should say. I will not impose a fine under these  
16 circumstances. There is mandatory Special Assessment of \$400.

17 Now, what that means in practice is that the corporate  
18 defendant remains under the supervision of the Probation  
19 Office, and it has to comply with the mandatory conditions that  
20 it not commit another federal, state or local crime; that it  
21 within 30 days designate an individual, official of the  
22 organization to act as the organization's representative and it  
23 be the primary contact; that it provide and answer truthfully  
24 all inquiries by the Probation Office and follow the  
25 instructions of the Probation Office; that it must notify the

1 Probation Office at least ten days prior to any change of  
2 principal business or mailing address; and it shall permit the  
3 Probation Office to visit the organization at any of its  
4 operating locales; that it notify the Probation Office within  
5 72 hours of any criminal prosecution, major civil litigation or  
6 administrative proceeding; that it may not dissolve, change its  
7 name or change the name under which it does business unless all  
8 of the judgment involved here has been satisfied, and that,  
9 frankly, includes the obligation to assure compliance by  
10 Mr. Tutunjian with his financial obligations here. And the  
11 organization may not waste or without the permission of the  
12 Probation Office sell or assign or transfer its assets.

13 Now, the Probation Office is not going to be acting as  
14 a receiver or a supervisor of the business, but they are going  
15 to be involved to make sure that there are payments here that  
16 are properly made involving Mr. Tutunjian and that there is not  
17 waste from the business.

18 I must add, I guess, that, given the way in which I  
19 have formulated Mr. Tutunjian's sentence, I should have a  
20 parallel sentence for EJT for purposes of the time period of  
21 probation, making it 20 months to run concurrently with  
22 Mr. Tutunjian's probation, because they are mutually  
23 reinforcing under these circumstances, and both Mr. Tutunjian  
24 personally and the corporate entity have reinforcing  
25 responsibilities. I won't call it "personal guaranties,"



1       because that has a particular resonance in this setting, but  
2       that's what it amounts to.

3               MR. CORMIER:   Just so we are clear, your Honor, for  
4       instance, if EJT were to have a buyer to buy the medallions,  
5       does that require --

6               THE COURT:    Yes.

7               MR. CORMIER:   -- preapproval of Probation?

8               THE COURT:    It does.

9               MR. CORMIER:   That's fine.

10              THE COURT:    It does.  Is that going to be withheld  
11       unreasonably?  Of course not.  But any movement of assets here  
12       are something that I want to know about --

13              MR. CORMIER:   Understood.

14              THE COURT:    -- or, more accurately, Probation should  
15       know about, and if they are concerned about it, then we'll take  
16       it up.

17              MR. CORMIER:   Got it.  Thank you.

18              THE COURT:    Anybody else that we need to take up at  
19       this point?  So, Ms. Beatty, I think, together with  
20       Ms. Broquist will get to work on a first draft, and I will  
21       approve it, and it will be provided to the parties before we  
22       enter this, just so that we are all on the same page for it,  
23       but I think you understand the plot of this.

24              Anything further?

25              MS. BOWER:    No, sir.

1                   THE COURT: All right. We'll be in recess. Thank  
2     you.

3                   THE CLERK: All rise.

4                   (WHEREUPON, the proceedings adjourned at 12:16 p.m.)

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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *U.S. v Tutunjian, et al.*, No. 1:16-cr-10225-DPW.

Date: 6/26/19

/s/ Brenda K. Hancock  
Brenda K. Hancock, RMR, CRR  
Official Court Reporter